

By: Senator(s) White

To: Judiciary, Division A

SENATE BILL NO. 2249

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE AN ENHANCED PENALTY FOR DRIVING UNDER THE INFLUENCE
3 WHILE A CHILD OF A CERTAIN AGE IS A PASSENGER; AND FOR RELATED
4 PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 63-11-30, Mississippi Code of 1972, is
7 amended as follows:

8 63-11-30. (1) It is unlawful for any person to drive or
9 otherwise operate a vehicle within this state who (a) is under the
10 influence of intoxicating liquor; (b) is under the influence of
11 any other substance which has impaired such person's ability to
12 operate a motor vehicle; (c) has an alcohol concentration of eight
13 one-hundredths percent (.08%) or more for persons who are above
14 the legal age to purchase alcoholic beverages under state law, or
15 two one-hundredths percent (.02%) or more for persons who are
16 below the legal age to purchase alcoholic beverages under state
17 law, in the person's blood based upon grams of alcohol per one
18 hundred (100) milliliters of blood or grams of alcohol per two
19 hundred ten (210) liters of breath as shown by a chemical analysis
20 of such person's breath, blood or urine administered as authorized
21 by this chapter; (d) is under the influence of any drug or
22 controlled substance, the possession of which is unlawful under
23 the Mississippi Controlled Substances Law; or (e) has an alcohol
24 concentration of four one-hundredths percent (.04%) or more in the
25 person's blood, based upon grams of alcohol per one hundred (100)
26 milliliters of blood or grams of alcohol per two hundred ten (210)
27 liters of breath as shown by a chemical analysis of such person's

28 blood, breath or urine, administered as authorized by this chapter
29 for persons operating a commercial motor vehicle.

30 (2) (a) Except as otherwise provided in subsection (3),
31 upon conviction of any person for the first offense of violating
32 subsection (1) of this section where chemical tests provided for
33 under Section 63-11-5 were given, or where chemical test results
34 are not available, such person shall be fined not less than Two
35 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
36 (\$1,000.00), or imprisoned for not more than forty-eight (48)
37 hours in jail or both; and the court shall order such person to
38 attend and complete an alcohol safety education program as
39 provided in Section 63-11-32. The court may substitute attendance
40 at a victim impact panel instead of forty-eight (48) hours in
41 jail. Provided, however, any person convicted for a first offense
42 when a child aged eight (8) years or younger was a passenger in
43 the vehicle at the time of the violation shall be sentenced to not
44 less than forty-eight (48) hours nor more than thirty (30) days in
45 jail and a fine of not less than Five Hundred Dollars (\$500.00)
46 nor more than One Thousand Five Hundred Dollars (\$1,500.00). In
47 addition, the Department of Public Safety, the Commissioner of
48 Public Safety or his duly authorized agent shall, after conviction
49 and upon receipt of the court abstract, suspend the driver's
50 license and driving privileges of such person for a period of not
51 less than ninety (90) days and until such person attends and
52 successfully completes an alcohol safety education program as
53 herein provided; provided, however, in no event shall such period
54 of suspension exceed one (1) year. Commercial driving privileges
55 shall be suspended as provided in Section 63-1-83.

56 The circuit court having jurisdiction in the county in which
57 the conviction was had or the circuit court of the person's county
58 of residence may reduce the suspension of driving privileges under
59 Section 63-11-30(2)(a) if the denial of which would constitute a
60 hardship on the offender, except that no court may issue such an

61 order reducing the suspension of driving privileges under this
62 subsection until thirty (30) days have elapsed from the effective
63 date of the suspension. Hardships shall only apply to first
64 offenses under Section 63-11-30(1), and shall not apply to second,
65 third or subsequent convictions of any person violating subsection
66 (1) of this section. A reduction of suspension on the basis of
67 hardship shall not be available to any person who refused to
68 submit to a chemical test upon the request of a law enforcement
69 officer as provided in Section 63-11-5. When the petition is
70 filed, such person shall pay to the circuit clerk of the court
71 where the petition is filed a fee of Fifty Dollars (\$50.00), which
72 shall be deposited into the State General Fund to the credit of a
73 special fund hereby created in the State Treasury to be used for
74 alcohol or drug abuse treatment and education, upon appropriation
75 by the Legislature. This fee shall be in addition to any other
76 court costs or fees required for the filing of petitions.

77 The petition filed under the provisions of this subsection
78 shall contain the specific facts which the petitioner alleges to
79 constitute a hardship and the driver's license number of the
80 petitioner. A hearing may be held on any petition filed under
81 this subsection only after ten (10) days' prior written notice to
82 the Commissioner of Public Safety, or his designated agent, or the
83 attorney designated to represent the state. At such hearing, the
84 court may enter an order reducing the period of suspension.

85 The order entered under the provisions of this subsection
86 shall contain the specific grounds upon which hardship was
87 determined, and shall order the petitioner to attend and complete
88 an alcohol safety education program as provided in Section
89 63-11-32. A certified copy of such order shall be delivered to
90 the Commissioner of Public Safety by the clerk of the court within
91 five (5) days of the entry of the order. The certified copy of
92 such order shall contain information which will identify the
93 petitioner, including, but not limited to, the name, mailing

94 address, street address, social security number and driver's
95 license number of the petitioner.

96 At any time following at least thirty (30) days of suspension
97 for a first offense violation of this section, the court may grant
98 the person hardship driving privileges upon written petition of
99 the defendant, if it finds reasonable cause to believe that
100 revocation would hinder the person's ability to:

101 (i) Continue his employment;

102 (ii) Continue attending school or an educational
103 institution; or

104 (iii) Obtain necessary medical care.

105 Proof of the hardship shall be established by clear and
106 convincing evidence which shall be supported by independent
107 documentation.

108 (b) Except as otherwise provided in subsection (3),
109 upon any second conviction of any person violating subsection (1)
110 of this section, the offenses being committed within a period of
111 five (5) years, such person shall be fined not less than Six
112 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
113 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
114 days nor more than one (1) year and sentenced to community service
115 work for not less than ten (10) days nor more than one (1) year.
116 Any person convicted of a second offense when a child aged eight
117 (8) years or younger was a passenger in the vehicle at the time of
118 the second violation, regardless of whether such a child was
119 present for the first offense, shall be sentenced not less than
120 fifteen (15) days nor more than one (1) year in jail, and shall be
121 fined not less than One Thousand Dollars (\$1,000.00) nor more than
122 Two Thousand Dollars (\$2,000.00). The minimum penalties shall not
123 be suspended or reduced by the court and no prosecutor shall offer
124 any suspension or sentence reduction as part of a plea bargain.

125 Except as may otherwise be provided by paragraph (d) of this
126 subsection, the Commissioner of Public Safety shall suspend the

127 driver's license of such person for two (2) years. Suspension of
128 a commercial driver's license shall be governed by Section
129 63-1-83. Upon any second conviction as described in this
130 paragraph, the court shall ascertain whether the defendant is
131 married, and if the defendant is married shall obtain the name and
132 address of the defendant's spouse; the clerk of the court shall
133 submit this information to the Department of Public Safety.
134 Further, the commissioner shall notify in writing, by certified
135 mail, return receipt requested, the owner of the vehicle and the
136 spouse, if any, of the person convicted of the second violation of
137 the possibility of forfeiture of the vehicle if such person is
138 convicted of a third violation of subsection (1) of this section.
139 The owner of the vehicle and the spouse shall be considered
140 notified under this paragraph if the notice is deposited in the
141 United States mail and any claim that the notice was not in fact
142 received by the addressee shall not affect a subsequent forfeiture
143 proceeding.

144 For any second or subsequent conviction of any person under
145 this section, the person shall also be subject to the penalties
146 set forth in Section 63-11-31.

147 (c) Except as otherwise provided in subsection (3), for
148 any third or subsequent conviction of any person violating
149 subsection (1) of this section, the offenses being committed
150 within a period of five (5) years, such person shall be guilty of
151 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
152 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
153 less than one (1) year nor more than five (5) years in the custody
154 of the Department of Corrections; provided, however, that for any
155 such offense which does not result in serious injury or death to
156 any person, any sentence of incarceration may be served in the
157 county jail rather than in the State Penitentiary at the
158 discretion of the circuit court judge. Any person convicted of a
159 third or subsequent offense when a child aged eight (8) years or

160 younger was a passenger in the vehicle at the time of the third or
161 subsequent violation, regardless of whether such a child was
162 present for any prior offense, shall be sentenced to not less than
163 one (1) nor more than seven (7) years and shall be fined not less
164 than Three Thousand Dollars (\$3,000.00) nor more than Seven
165 Thousand Five Hundred Dollars (\$7,500.00). The minimum penalties
166 shall not be suspended or reduced by the court and no prosecutor
167 shall offer any suspension or sentence reduction as part of a plea
168 bargain. The law enforcement agency shall seize the vehicle
169 operated by any person charged with a third or subsequent
170 violation of subsection (1) of this section, if such convicted
171 person was driving the vehicle at the time the offense was
172 committed. Such vehicle may be forfeited in the manner provided
173 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
174 provided by paragraph (e) of this subsection, the Commissioner of
175 Public Safety shall suspend the driver's license of such person
176 for five (5) years. The suspension of a commercial driver's
177 license shall be governed by Section 63-1-83.

178 (d) Except as otherwise provided in subsection (3), any
179 person convicted of a second violation of subsection (1) of this
180 section shall receive an in-depth diagnostic assessment, and if as
181 a result of such assessment is determined to be in need of
182 treatment of his alcohol and/or drug abuse problem, such person
183 shall successfully complete treatment of his alcohol and/or drug
184 abuse problem at a program site certified by the Department of
185 Mental Health. Such person shall be eligible for reinstatement of
186 his driving privileges upon the successful completion of such
187 treatment after a period of one (1) year after such person's
188 driver's license is suspended. Each person who receives a
189 diagnostic assessment shall pay a fee representing the cost of
190 such assessment. Each person who participates in a treatment
191 program shall pay a fee representing the cost of such treatment.

192 (e) Except as otherwise provided in subsection (3), any
193 person convicted of a third or subsequent violation of subsection
194 (1) of this section shall receive an in-depth diagnostic
195 assessment, and if as a result of such assessment is determined to
196 be in need of treatment of his alcohol and/or drug abuse problem,
197 such person shall enter an alcohol and/or drug abuse program
198 approved by the Department of Mental Health for treatment of such
199 person's alcohol and/or drug abuse problem. If such person
200 successfully completes such treatment, such person shall be
201 eligible for reinstatement of his driving privileges after a
202 period of three (3) years after such person's driver's license is
203 suspended.

204 (f) The Department of Public Safety shall promulgate
205 rules and regulations for the use of interlock ignition devices as
206 provided in Section 63-11-31 and consistent with the provisions
207 therein. Such rules and regulations shall provide for the
208 calibration of such devices and shall provide that the cost of the
209 use of such systems shall be borne by the offender. The
210 Department of Public Safety shall approve which vendors of such
211 devices shall be used to furnish such systems.

212 (3) (a) This subsection shall be known and may be cited as
213 Zero Tolerance for Minors. The provisions of this subsection
214 shall apply only when a person under the age of twenty-one (21)
215 years has a blood alcohol concentration of two one-hundredths
216 percent (.02%) or more, but lower than eight one-hundredths
217 percent (.08%). If such person's blood alcohol concentration is
218 eight one-hundredths percent (.08%) or more, the provisions of
219 subsection (2) shall apply.

220 (b) Upon conviction of any person under the age of
221 twenty-one (21) years for the first offense of violating
222 subsection (1) of this section where chemical tests provided for
223 under Section 63-11-5 were given, or where chemical test results
224 are not available, such person shall have his driver's license

225 suspended for ninety (90) days and shall be fined Two Hundred
226 Fifty Dollars (\$250.00); and the court shall order such person to
227 attend and complete an alcohol safety education program as
228 provided in Section 63-11-32. The court may also require
229 attendance at a victim impact panel.

230 The court in the county in which the conviction was had or
231 the circuit court of the person's county of residence may reduce
232 the suspension of driving privileges under Section 63-11-30(2)(a)
233 if the denial of which would constitute a hardship on the
234 offender, except that no court may issue such an order reducing
235 the suspension of driving privileges under this subsection until
236 thirty (30) days have elapsed from the effective date of the
237 suspension. Hardships shall only apply to first offenses under
238 Section 63-11-30(1), and shall not apply to second, third or
239 subsequent convictions of any person violating subsection (1) of
240 this section. A reduction of suspension on the basis of hardship
241 shall not be available to any person who refused to submit to a
242 chemical test upon the request of a law enforcement officer as
243 provided in Section 63-11-5. When the petition is filed, such
244 person shall pay to the circuit clerk of the court where the
245 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
246 deposited into the State General Fund to the credit of a special
247 fund hereby created in the State Treasury to be used for alcohol
248 or drug abuse treatment and education, upon appropriation by the
249 Legislature. This fee shall be in addition to any other court
250 costs or fees required for the filing of petitions.

251 The petition filed under the provisions of this subsection
252 shall contain the specific facts which the petitioner alleges to
253 constitute a hardship and the driver's license number of the
254 petitioner. A hearing may be held on any petition filed under
255 this subsection only after ten (10) days' prior written notice to
256 the Commissioner of Public Safety, or his designated agent, or the

257 attorney designated to represent the state. At such hearing, the
258 court may enter an order reducing the period of suspension.

259 The order entered under the provisions of this subsection
260 shall contain the specific grounds upon which hardship was
261 determined, and shall order the petitioner to attend and complete
262 an alcohol safety education program as provided in Section
263 63-11-32. A certified copy of such order shall be delivered to
264 the Commissioner of Public Safety by the clerk of the court within
265 five (5) days of the entry of the order. The certified copy of
266 such order shall contain information which will identify the
267 petitioner, including, but not limited to, the name, mailing
268 address, street address, social security number and driver's
269 license number of the petitioner.

270 At any time following at least thirty (30) days of suspension
271 for a first offense violation of this section, the court may grant
272 the person hardship driving privileges upon written petition of
273 the defendant, if it finds reasonable cause to believe that
274 revocation would hinder the person's ability to:

- 275 (i) Continue his employment;
- 276 (ii) Continue attending school or an educational
277 institution; or
- 278 (iii) Obtain necessary medical care.

279 Proof of the hardship shall be established by clear and
280 convincing evidence which shall be supported by independent
281 documentation.

282 (c) Upon any second conviction of any person under the
283 age of twenty-one (21) years violating subsection (1) of this
284 section, the offenses being committed within a period of five (5)
285 years, such person shall be fined not more than Five Hundred
286 Dollars (\$500.00) and shall have his driver's license suspended
287 for one (1) year.

288 (d) For any third or subsequent conviction of any
289 person under the age of twenty-one (21) years violating subsection

290 (1) of this section, the offenses being committed within a period
291 of five (5) years, such person shall be fined not more than One
292 Thousand Dollars (\$1,000.00) and shall have his driver's license
293 suspended until he reaches the age of twenty-one (21) or for two
294 (2) years, whichever is longer.

295 (e) Any person under the age of twenty-one (21) years
296 convicted of a second violation of subsection (1) of this section,
297 may have the period that his driver's license is suspended reduced
298 if such person receives an in-depth diagnostic assessment, and as
299 a result of such assessment is determined to be in need of
300 treatment of his alcohol and/or drug abuse problem and
301 successfully completes treatment of his alcohol and/or drug abuse
302 problem at a program site certified by the Department of Mental
303 Health. Such person shall be eligible for reinstatement of his
304 driving privileges upon the successful completion of such
305 treatment after a period of six (6) months after such person's
306 driver's license is suspended. Each person who receives a
307 diagnostic assessment shall pay a fee representing the cost of
308 such assessment. Each person who participates in a treatment
309 program shall pay a fee representing the cost of such treatment.

310 (f) Any person under the age of twenty-one (21) years
311 convicted of a third or subsequent violation of subsection (1) of
312 this section shall complete treatment of an alcohol and/or drug
313 abuse program at a site certified by the Department of Mental
314 Health.

315 (g) The court shall have the discretion to rule that a
316 first offense of this subsection by a person under the age of
317 twenty-one (21) years shall be nonadjudicated. Such person shall
318 be eligible for nonadjudication only once. The Department of
319 Public Safety shall maintain a confidential registry of all cases
320 which are nonadjudicated as provided in this paragraph. A judge
321 who rules that a case is nonadjudicated shall forward such ruling
322 to the Department of Public Safety. Judges and prosecutors

323 involved in implied consent violations shall have access to the
324 confidential registry for the purpose of determining
325 nonadjudication eligibility. A record of a person who has been
326 nonadjudicated shall be maintained for five (5) years or until
327 such person reaches the age of twenty-one (21) years. Any person
328 whose confidential record has been disclosed in violation of this
329 paragraph shall have a civil cause of action against the person
330 and/or agency responsible for such disclosure.

331 (4) In addition to the other penalties provided in this
332 section, every person refusing a law enforcement officer's request
333 to submit to a chemical test of his breath as provided in this
334 chapter, or who was unconscious at the time of a chemical test and
335 refused to consent to the introduction of the results of such test
336 in any prosecution, shall suffer an additional suspension of
337 driving privileges as follows:

338 The Commissioner of Public Safety or his authorized agent
339 shall suspend the driver's license or permit to drive or deny the
340 issuance of a license or permit to such person as provided for
341 first, second and third or subsequent offenders in subsection (2)
342 of this section. Such suspension shall be in addition to any
343 suspension imposed pursuant to subsection (1) of Section 63-11-23.
344 The minimum suspension imposed under this subsection shall not be
345 reduced and no prosecutor is authorized to offer a reduction of
346 such suspension as part of a plea bargain.

347 (5) Every person who operates any motor vehicle in violation
348 of the provisions of subsection (1) of this section and who in a
349 negligent manner causes the death of another or mutilates,
350 disfigures, permanently disables or destroys the tongue, eye, lip,
351 nose or any other limb, organ or member of another shall, upon
352 conviction, be guilty of a separate felony for each such death,
353 mutilation, disfigurement or other injury and shall be committed
354 to the custody of the Department of Corrections for a period of
355 time of not less than five (5) years and not to exceed twenty-five

356 (25) years for each such death, mutilation, disfigurement or other
357 injury, and the imprisonment for the second or each subsequent
358 conviction, in the discretion of the court, shall commence either
359 at the termination of the imprisonment for the preceding
360 conviction or run concurrently with the preceding conviction. Any
361 person charged with causing the death of another as described in
362 this subsection shall be required to post bail before being
363 released after arrest.

364 (6) Upon conviction of any violation of subsection (1) of
365 this section, the trial judge shall sign in the place provided on
366 the traffic ticket, citation or affidavit stating that the person
367 arrested either employed an attorney or waived his right to an
368 attorney after having been properly advised. If the person
369 arrested employed an attorney, the name, address and telephone
370 number of the attorney shall be written on the ticket, citation or
371 affidavit. The judge shall cause a copy of the traffic ticket,
372 citation or affidavit, and any other pertinent documents
373 concerning the conviction, to be sent to the Commissioner of
374 Public Safety. A copy of the traffic ticket, citation or
375 affidavit and any other pertinent documents, having been attested
376 as true and correct by the Commissioner of Public Safety, or his
377 designee, shall be sufficient proof of the conviction for purposes
378 of determining the enhanced penalty for any subsequent convictions
379 of violations of subsection (1) of this section.

380 (7) Convictions in other states of violations for driving or
381 operating a vehicle while under the influence of an intoxicating
382 liquor or while under the influence of any other substance that
383 has impaired the person's ability to operate a motor vehicle
384 occurring after July 1, 1992, shall be counted for the purposes of
385 determining if a violation of subsection (1) of this section is a
386 first, second, third or subsequent offense and the penalty that
387 shall be imposed upon conviction for a violation of subsection (1)
388 of this section.

389 (8) For the purposes of determining how to impose the
390 sentence for a second, third or subsequent conviction under this
391 section, the indictment shall not be required to enumerate
392 previous convictions. It shall only be necessary that the
393 indictment state the number of times that the defendant has been
394 convicted and sentenced within the past five (5) years under this
395 section to determine if an enhanced penalty shall be imposed. The
396 amount of fine and imprisonment imposed in previous convictions
397 shall not be considered in calculating offenses to determine a
398 second, third or subsequent offense of this section.

399 (9) Any person under the legal age to obtain a license to
400 operate a motor vehicle convicted under this section shall not be
401 eligible to receive such license until the person reaches the age
402 of eighteen (18) years.

403 (10) Suspension of driving privileges for any person
404 convicted of violations of Section 63-11-30(1) shall run
405 consecutively.

406 (11) The court may order the use of any ignition interlock
407 device as provided in Section 63-11-31.

408 **SECTION 2.** This act shall take effect and be in force from
409 and after July 1, 2006.